

Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

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In the Matter of)	Docket No. 2012-6 CRB CD 2004-2009
)	(Phase II)
Distribution of the 2004-2009)	
Cable Royalty Funds)	
<hr/>)	

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In the Matter of)	Docket No. 2012-7 CRB SD 1999-2009
)	(Phase II)
Distribution of the 1999-2009)	
Satellite Royalty Funds)	
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**MPAA-REPRESENTED PROGRAM SUPPLIERS AND SETTling DEVOTIONAL
CLAIMANTS' REPLY TO IPG'S OPPOSITION TO JOINT MOTION IN LIMINE AND
MOTION FOR SUMMARY DISPOSITION AS A PAPER PROCEEDING**

The MPAA-Represented Program Suppliers ("MPAA") and the Settling Devotional Claimants ("SDC") hereby submit their reply to the April 5, 2018 Opposition filed by Independent Producers Group ("IPG") to MPAA and SDC's motion in limine seeking a ruling from the Copyright Royalty Judges ("Judges") excluding all exhibits offered by IPG, and following that exclusion, entering summary disposition under 17 U.S.C. § 803(b)(5) as a paper proceeding, adopting the methodologies and shares set forth in MPAA's Written Direct Statement (dated Aug. 22, 2016) and the SDC's Written Direct Statement (dated Aug 22, 2016) ("Motion"). As explained below, the Motion should be granted in all respects.

BACKGROUND

As the Judges are aware, the commencement date for the recent 2010-13 Cable Allocation Hearing was delayed from February 5, 2018, until February 14, 2018, as the result of

an emergency motion filed in that proceeding by Program Suppliers.¹ As a part their efforts to meet and confer with all parties impacted by the emergency motion, counsel for MPAA reached out to counsel for IPG and SDC on January 19, 2018 and asked if they would agree to either reschedule the hearing set to commence in this proceeding on April 9, 2018, or, in the alternative to rescheduling the hearing, consent to converting this case to a paper proceeding—in an effort to “accommodate scheduling of the 2010-13 Cable Allocation Phase hearing during April 2018.” *See* Exhibit A, Olaniran Decl. at Exhibit 1. MPAA’s paper proceeding offer was made solely as a possible means of addressing the numerous scheduling conflicts that were implicated among the six parties and more than thirty witnesses that would need to appear to testify during the 2010-13 Cable Allocation hearing, which MPAA’s counsel was simultaneously seeking to have continued.

Although counsel for SDC indicated that they would consent to a paper proceeding at that time, counsel for IPG responded on January 24, 2018 that it would not provide consent. *See id.* Olaniran Decl., Exhibit 1. Accordingly, upon receiving IPG’s negative response about a paper proceeding, MPAA and SDC began preparing for the April 9, 2018 hearing. Thereafter, on March 19, 2018, the 2010-13 Cable Allocation hearing concluded, and, as a result, the scheduling conflicts that MPAA sought to address in its earlier paper proceeding proposal to IPG and SDC became moot, eliminating any need for this proceeding to be converted to a paper proceeding.

On March 21, 2018, approximately two months *after* IPG had rejected MPAA’s offer of a paper proceeding, counsel for IPG emailed MPAA and SDC out of the blue indicating that IPG “was agreeable” to making the instant proceeding a paper proceeding. *See* IPG Opposition,

¹ *See Order Continuing Hearing And Permitting Amended Written Rebuttal Statements, Denying Other Motions, And Reserving Ruling On Other Requests*, Docket No. 14-CRB-0010-CD (2010-13) at 1-2 (January 26, 2018).

Boydston Decl. at Exhibit B. MPAA and SDC both responded that they were no longer interested in making this a paper proceeding, having invested considerable time and resources at that point in preparing for hearing, and with potential scheduling conflicts mooted. *See* Exhibit A. Olaniran Decl. at Exhibit 2.

IPG did not disclose the reason for its sudden change of heart about a paper proceeding to MPAA and SDC on March 21. However, on April 2, 2018, only one week before the hearing was scheduled to commence, IPG informed MPAA and SDC that its only witness, Dr. Cowan, was refusing to appear before the Judges to testify. At the same time, IPG informed the parties that IPG intended to offer as its only direct case hearing exhibits Dr. Cowan's written testimony and prior testimony that was not designated as required under the Judges' regulations. Thereafter, MPAA and SDC promptly filed the instant Motion.

I. The Parties' Prior Offer Of A Paper Proceeding (Which IPG Rejected) Does Not Excuse Dr. Cowan's Refusal To Testify At The April 9, 2018 Hearing.

IPG argues that MPAA's and SDC's willingness to convert this case to a paper proceeding in January, 2018 (which IPG then rejected outright) excuses Dr. Cowan from appearing before the Judges *now* to offer testimony. IPG Opposition at 3-4. However, this is simply incorrect. The Judges' regulations make it clear that no evidence may be admitted without a sponsoring witness, and the Judges' prior rulings have made it clear that a witness' failure to appear in person before the Judges and offer live testimony mandates that any written testimony associated with that witness not be admitted as evidence. 37 C.F.R. § 351.10(a); 78 Fed. Reg. 64984, 64992 n.28 (Oct. 30, 2013); *see also* Docket No. 2008-2 CRB CD 2000-2003 (Phase II), June 6, 2013 Tr. at 1304:5-6 (Barnett, C.J.) ("[S]ince the witness is not here, the testimony will not be admitted."). IPG's suggestion that the Judges' sponsoring witness requirement can be satisfied by simply having the sponsoring witness sign the declaration

attached to their filed testimony, IPG Opposition at 5-6, n.1, is not only inconsistent with both precedent and the regulations,² it *cannot* be correct, as it would defeat the entire purpose of the Judges *ever* holding a hearing in cable and satellite royalty distribution proceedings.

IPG does not deny that Dr. Cowan has refused to appear at the April 9, 2018 hearing to testify. Even worse, IPG has offered *no* explanation for Dr. Cowan's refusal to appear *at all*, saying only that "it is a matter beyond IPG's control." IPG Opposition at 3-4. Instead, IPG argues that the Judges should infer that MPAA and SDC's prior offer of a paper proceeding (which was only made in an effort to address scheduling issues related to the 2010-13 Cable Allocation proceeding) suggests that the parties will not be prejudiced by the nonappearance of Dr. Cowan now. This is a ludicrous position.

As explained in the Motion, MPAA and SDC have spent a significant amount of time and effort preparing to cross-examine Cowan on multiple issues, including issues related to his revisions to his testimony and the involvement of IPG and its counsel in those revisions. Motion at 3-4. MPAA and SDC's effort in January to accommodate scheduling issues of other participants in the 2010-13 Cable Allocation proceeding (which ended up not even being a concern, as the hearing in that case ended March 19, 2018), cannot be used by IPG as a smokescreen to cover for its failure to produce its sole witness for cross-examination now. Put simply, IPG has not articulated any reasonable basis (much less shown "good cause") for the admission of Dr. Cowan's testimony without his appearance at the hearing. Accordingly, MPAA and SDC's Motion should be granted, and Dr. Cowan's written direct testimony (IPG Exhibit 9000) should not be admitted.

² See 37 C.F.R. § 351.10(a) ("Written testimony and exhibits must be authenticated or identified in order to be admissible as evidence.")

II. IPG's Prior Designated Testimony Exhibits Must Be Excluded Because IPG Admits That It Failed To Comply With The Judges' Regulations.

IPG acknowledges that it failed to include a copy of *any* of its purported prior designated testimony in its written direct statement. *See* IPG Opposition at 7-8. But the Judges' regulations *required* IPG to include all portions of any prior records that IPG intended to rely on in its written direct statement. *See* 37 C.F.R. § 351.4(b)(2) ("If a party intends to rely on any part of the testimony of a witness in a prior proceeding, the complete testimony of that witness (i.e., direct, cross and redirect examination) must be designated. The party submitting such past records and/or testimony shall include a copy with the written direct statement."). This provision is not a mere technicality, as IPG wrongly suggests. The Judges' regulations require all parties to affirmatively disclose (and provide copies) of all portions of prior records on which they intend to rely in their written direct statements in order to permit opposing parties to review the information and develop appropriate rebuttal testimony. The fact that prior records are voluminous, or, to use IPG's terminology, "largely irrelevant," IPG Opposition at 6,³ does not excuse a party from complying with the regulations. As MPAA and SDC explained in the Motion, IPG's failure to comply with Section 351.4(b)(2), alone, is sufficient grounds to exclude IPG Exhibits 9001-21 from evidence in this proceeding. *See* Motion at 4 (citing *Order Denying in Part and Granting in Part MPAA Motions Relating to IPG Testimony and Exhibits* at 4 (July 20, 2015)).⁴

³ If IPG Exhibits 9001-21 are "largely irrelevant," as IPG concedes, then they should not be admitted for that reason as well. *See* 37 C.F.R. §351.10(a) (limiting admissible evidence in proceedings before the Judges to "evidence that is relevant").

⁴ IPG argues that MPAA and SDC should have moved to strike IPG's improper recitation of prior designated testimony in its written direct statement. IPG Opposition at 8-9 (accusing MPAA and SDC of "sandbagging" IPG by first raising this argument with the Judges after IPG identified IPG Exhibits 9001-21 on its proposed hearing exhibit list). However, given that (1) IPG's purported designation of prior testimony was contrary to the regulations,

IPG also admits that it failed to produce *any* portion of the documents that it now seeks to admit into evidence as IPG Exhibits 9001-21 in discovery to either MPAA or SDC in connection with this proceeding. *See id.* As IPG is aware, its admitted failure to produce documents underlying parts of its written direct statement presents *yet another* basis for the exclusion of IPG Exhibits 9001-21. *See* 37 C.F.R. § 351.10(f). However, despite this deficiency, IPG argues that the Judges should still allow IPG Exhibit 9001-21 to be admitted, for two reasons.

First, IPG argues that it historically produced these documents to MPAA and SDC in prior proceedings, and that that should be deemed sufficient to permit IPG to proceed to admit these documents into evidence now, in the instant proceeding. However, IPG ignores the fact that the Judges have ruled that production of documents in discovery in a prior royalty distribution proceeding does not excuse a party from producing the documents in the current case. *See Order Granting In Part Multigroup Claimants' First Motion To Compel Production Of Documents By MPAA*, Docket No. 14-CRB-0010-CD (2010-13) at 5 (Sept. 14, 2016) (“The Judges find that MPAA’s production of documents in a prior proceeding does not fulfill its obligation to engage in discovery in the instant proceeding.”). Thus, IPG cannot rely on assertions that it previously produced material in other matters to excuse its failure to produce underlying documents here.

Second, IPG argues that even if IPG Exhibits 9001-21 are not admitted as a part of IPG’s direct case, IPG should be permitted to admit “relevant portions” of IPG Exhibits 9001-21 as cross-examination exhibits, provided that the documents are filed in eCRB at least 24 hours in advance of being offered into evidence. IPG Opposition at 9-12. But this argument simply puts

and (2) there was no actual prior designated testimony filed as a part of IPG’s written direct statement, there was previously nothing in the record (or filed in eCRB) for MPAA or SDC to move to strike. Accordingly, IPG’s argument fails.

the cart before the horse. Here, IPG failed to file any rebuttal testimony addressing MPAA or SDC's methodologies *at all*. With the refusal of IPG's only direct case witness to appear and sponsor his testimony, and the exclusion of all of IPG's direct case exhibits, there are no genuine issues of material fact remaining in this proceeding, as MPAA and SDC's written direct statements are uncontroverted. Accordingly, the case is ripe for summary disposition under 17 U.S.C. § 803(b)(5). Where no genuine issues of material fact exist, and summary disposition is appropriate, the Judges need not hold a hearing. *See id.*; *see also Order On Joint Sports Claimants' Motion For Summary Adjudication Dismissing Claims Of Independent Producers Group* at 2 (August 29, 2014) ("August 29, 2014 Order"). When the Judges determine no hearing is needed, no cross-examination exhibits are necessary. Accordingly, IPG's second argument also falls flat.

Finally, IPG has failed to identify anything in the "designated" testimony that it hopes to offer that would raise a genuine controversy even if it were admitted, leaving it instead to the Judges and the other parties to try to sift through the "voluminous" and "largely irrelevant" exhibits to try to understand what controversy there is. That is not our job, nor is it the Judges' job. It is IPG's job to properly raise a controversy if one exists. As in the claims stage of this case, "IPG has, metaphorically, tossed a hopelessly tangled skein of yarn in the midst of the Judges and participants and told them to make a sweater." *Memorandum Opinion and Ruling on Validity and Categorization of Claims*, at 44 (Mar. 13, 2015). Even if the "designated" testimony were deemed to be admissible, IPG has failed to establish that it would have raised a genuine issue of material fact.

III. If The Judges Exclude IPG Exhibits 9000-9021, Summary Disposition Is Required, And IPG Is Not Entitled To Cross-Examine MPAA And SDC's Witnesses.

IPG argues that, even if all its direct case exhibits are excluded by the Judges, the Judges cannot order summary disposition in this proceeding and must still hold a hearing in order to permit IPG the opportunity to cross-examine MPAA and SDC's witnesses. IPG Opposition at 12-13. This argument is especially illogical in the current proceeding, as IPG failed to submit any written rebuttal testimony addressing either the MPAA or SDC methodologies *at all*. Essentially, IPG argues that, having failed to file any rebuttal testimony, and now faced with no genuine issues of material fact remaining in the case, IPG should nevertheless be permitted a second bite at the apple and have an opportunity to attempt to generate yet un-disclosed issues of material fact through cross-examination of MPAA and SDC's witnesses at the April 9, 2018 hearing. IPG Opposition at 13 (suggesting that IPG desires to cross-examine the MPAA and SDC witnesses regarding "matters that are not immediately apparent"). However, as IPG should know, this is not the standard.

In the August 29, 2014 Order, the Judges ruled that a summary judgment standard should be applied to a motion for summary disposition under 17 U.S.C. § 803(b)(5). *See* August 29, 2014 Order at 2. MPAA and SDC have established that if IPG Exhibits 9000-9021 are not admitted, then MPAA and SDC's written direct statements will be uncontroverted, and there will be no genuine issues of material fact remaining in this proceeding warranting a hearing. Where there are no genuine issues of material fact, the Judges need not hold a hearing, and can proceed with summary disposition. *See* August 29, 2014 Order at 2 (recognizing that "Section 803(b)(5) expressly provides for a summary adjudication process, *i.e.*, a 'Paper Proceeding.'"). IPG's mere *desire* to engage in cross-examination, without more, does not require the Judges to conduct a hearing where MPAA and SDC's written direct statements are uncontroverted.

As a back-up argument, IPG also argues that the Judges must allow IPG to engage in cross-examination, even if IPG Exhibits 9000-21 are excluded, because the SDC were permitted to participate in the hearing of the 2000-03 Cable Phase II proceeding even after the SDC's proposed viewership methodology was excluded on the basis that it was untimely presented. However, IPG's argument misapprehends the issue, because unlike that proceeding, here, MPAA and the SDC's direct cases are uncontroverted.

In the 2000-03 Cable Phase II proceeding, the SDC presented admissible evidence, including both the written direct and rebuttal testimony and oral testimony of Dr. William Brown, establishing the existence of positive value of SDC programming and controverting the methodological evidence presented by IPG. *Final Distribution Order*, Docket No. 2008-2 CRB CD 2000-03 (Phase II), 78 Fed. Reg. 64984, 65003 (Oct. 30, 2013) (discussing Dr. Brown's rebuttal testimony controverting IPG's proposed methodology). Even disregarding the SDC's proposed viewership methodology, which was only a part of the SDC's rebuttal case and was not even a part of the SDC's direct case, the SDC's admissible evidence raised genuine issues of material fact as to the validity, reliability, and usability of IPG's evidence. *Id.* Unlike MPAA's and the SDC's evidence in this case, IPG's evidence in the 2000-03 Cable Phase II proceeding was controverted by evidence affirmatively presented by the SDC (as well as by MPAA). Unlike IPG's sole witness here, Dr. Cowan, the SDC's principal expert witness in that case appeared and faced cross-examination. Because the SDC's admissible evidence in the 2000-03 Cable Phase II proceeding raised a genuine controversy, it is not comparable to this case, in which there will be no further controversy after the exclusion of all of IPG's evidence. Accordingly, contrary to IPG's assertions, precedent does not support affording IPG an

opportunity to cross-examine MPAA and SDC's witnesses when their written direct statements are uncontroverted, and summary disposition as a paper proceeding is appropriate.

IV. Conclusion

For all of the foregoing reasons, MPAA and SDC's Motion should be granted. MPAA and the SDC request the Judges to exclude all IPG direct case evidence and enter summary disposition on a paper proceeding adopting MPAA's and the SDC's proposed methodologies and shares in the Program Suppliers and Devotional Categories, respectively, as set forth in the Motion, with regard to all cable and satellite funds at issue in this proceeding.

MPAA-REPRESENTED PROGRAM SUPPLIERS

/s/ Lucy Holmes Plovnick

Gregory O. Olaniran

D.C. Bar No. 455784

Lucy Holmes Plovnick

D.C. Bar No. 488752

Alesha M. Dominique

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SETTLING DEVOTIONAL CLAIMANTS

/s/ Matthew J. MacLean

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Date: April 6, 2018

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent electronically and served via the eCRB system on the following:

INDEPENDENT PRODUCERS GROUP

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/s/ Lucy Holmes Plovnick

Lucy Holmes Plovnick

EXHIBIT A

**Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.**

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In the Matter of)	
)	
Distribution of the 2004, 2005, 2006)	Docket No. 2012-6 CRB CD 2004-2009
2007, 2008 and 2009)	(Phase II)
Cable Royalty Funds)	
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In the Matter of)	
)	
Distribution of the 1999-2009)	Docket No. 2012-7 CRB SD 1999-2009
Satellite Royalty Funds)	(Phase II)
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DECLARATION OF GREGORY O. OLANIRAN

I, Gregory O. Olaniran, declare:

1. I am over 18 years of age and an attorney at law duly licensed to practice law in Maryland and the District of Columbia. I am a partner in the law firm of Mitchell Silberberg & Knupp LLC, attorneys of record for Motion Picture Association of America, Inc. ("MPAA") and other program suppliers who have agreed to representation by MPAA in the captioned proceedings.

2. I have personal knowledge of the following facts and, if called and sworn as a witness, could and would competently testify thereto.

3. Attached hereto as Exhibit 1 is a true and correct copy of email correspondence between myself, my colleagues Lucy Holmes Plovnick, and Alesha M. Dominique, Matthew J. MacLean and Arnold Lutzker, counsel for the Settling Devotional Claimants ("SDC"), and Brian

Boydston, counsel for Independent Producers Group ("IPG"), (dated January 19, 23, and 24, 2018).

4. Attached hereto as Exhibit 2 is a true and correct copy of email correspondence between myself, my colleagues Ms. Plovnick and Ms. Dominique, Mr. MacLean, Michael Warley, Jessica Nyman, Mr. Lutzker and Ben Sternberg, counsel for SDC, and Mr. Boydston, counsel for IPG, (dated March 21 and 22, 2018).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 6th day of April, 2018, at Washington, D.C.



Gregory O. Olaniran

**OLANIRAN
DECLARATION
EXHIBIT 1**

Plovnick, Lucy

From: Brian D. Boydston, Esq. <brianb@ix.netcom.com>
Sent: Wednesday, January 24, 2018 1:43 PM
To: MacLean, Matthew J.
Cc: Plovnick, Lucy; 'arnie@lutzker.com' (arnie@lutzker.com); Dominique, Alesha; Olaniran, Greg
Subject: Re: 2004-2009 Cable and 1999-2009 Satellite Phase II, Request for Consent to Move Hearing Dates, and in the Alternative For a Paper Proceeding

Yes, sorry I overlooked that.

No, IPG does not consent to a paper proceeding.

Brian Boydston

-----Original Message-----

From: "MacLean, Matthew J."
Sent: Jan 23, 2018 6:57 PM
To: "Brian D. Boydston, Esq."
Cc: "Plovnick, Lucy" , "arnie@lutzker.com' (arnie@lutzker.com)" , "Dominique, Alesha" , "Olaniran, Greg"
Subject: Re: 2004-2009 Cable and 1999-2009 Satellite Phase II, Request for Consent to Move Hearing Dates, and in the Alternative For a Paper Proceeding

Brian,

In addition to requesting a continuance, Lucy also asked if we would consent to a paper proceeding. Did you have a response to that request?

Matt

Sent from my iPad

Matthew J. MacLean | Partner

Pillsbury Winthrop Shaw Pittman LLP

1200 Seventeenth Street NW | Washington, DC 20036-3006

t 202.663.8183

matthew.maclea@pillsburylaw.com | website bio

On Jan 23, 2018, at 3:18 PM, Brian D. Boydston, Esq. <brianb@ix.netcom.com> wrote:

Dear Lucy, IPG does not agree to postpone the April Hearing date in this matter.

I understand that you intend to file a motion seeking such extension and believe that your request constitutes a sufficient attempt to meet and confer on the issue,

Brian Boydston

Counsel for IPG

-----Original Message-----

From: "Plovnick, Lucy"

Sent: Jan 19, 2018 4:26 PM

To: "MacLean, Matthew J. (matthew.maclean@pillsburylaw.com)" , "arnie@lutzker.com" (arnie@lutzker.com)" , "Brian D. Boydston (brianb@ix.netcom.com)"

Cc: "Dominique, Alesha" , "Olaniran, Greg"

Subject: 2004-2009 Cable and 1999-2009 Satellite Phase II, Request for Consent to Move Hearing Dates, and in the Alternative For a Paper Proceeding

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PREFIX="[default] <http://www.w3.org/TR/REC-html40>">><zzz!--[if 9]msogte="">><zzz!--
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Matt, Arnie, and Brian,

Currently the hearing in the 2004-2009 Cable and 1999-2009 Satellite Phase II proceeding is scheduled to commence on April 9, 2018. MPAA would like to seek the consent of SDC and IPG to ask that the Judges move the Phase II hearing to a later date, in order to accommodate scheduling of the 2010-13 Cable Allocation Phase hearing during April 2018. Please let us know if you will consent to such a motion. Additionally (and as a potential alternative to asking the Judges to reschedule the 2004-2009 Cable and 1999-2009 Satellite Phase II hearing yet again), MPAA was wondering if all parties would stipulate to have the Judges convert the case to a paper proceeding. Given the current posture of the case, it occurs to us that a paper proceeding might actually be more efficient for all parties to the Phase II case (and the Judges) than holding a hearing.

Please let us know if SDC and IPG will consent to either moving the Phase II hearing, or stipulate to converting the Phase II case to a paper proceeding.

Thanks,
Lucy



Lucy Holmes Plovnick | Partner, through her professional corporation

T: 202.355.7918 | lh@msk.com

Mitchell Silberberg & Knupp LLP | www.msk.com

1818 N Street NW, 8th Floor, Washington, DC 20036

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**OLANIRAN
DECLATATION
EXHIBIT 2**

Plovnick, Lucy

From: MacLean, Matthew J. <matthew.maclean@pillsburylaw.com>
Sent: Thursday, March 22, 2018 10:59 AM
To: Olaniran, Greg; 'Brian D. Boydston, Esq.'; Plovnick, Lucy; Warley, Michael A.
Cc: Dominique, Alesha; Arnold P. Lutzker; Nyman, Jessica T.; Ben Sternberg (Ben@lutzker.com)
Subject: RE: 2012-6 CRB CD 04-09 and 2012-7 CRB SD 99-09

In fairness to Brian, I think he timely responded that he did not consent to a paper proceeding.

That was the chance to ask for a paper proceeding, and I concur with Greg that it is too late now. We're ready to go forward with the hearing.

Matthew J. MacLean | Partner

Pillsbury Winthrop Shaw Pittman LLP
1200 Seventeenth Street NW | Washington, DC 20036-3006
t 202.663.8183
matthew.maclean@pillsburylaw.com | website bio

From: Olaniran, Greg [<mailto:goo@msk.com>]
Sent: Thursday, March 22, 2018 9:39 AM
To: 'Brian D. Boydston, Esq.' <brianb@ix.netcom.com>; Plovnick, Lucy <lh@msk.com>; MacLean, Matthew J. <matthew.maclean@pillsburylaw.com>; Warley, Michael A. <michael.warley@pillsburylaw.com>
Cc: Dominique, Alesha <amd@msk.com>; Arnold P. Lutzker <arnie@lutzker.com>
Subject: RE: 2012-6 CRB CD 04-09 and 2012-7 CRB SD 99-09

Brian,

We made the offer of a paper proceeding to IPG months ago and even as recent as the beginning of March 2018, but we did not receive a timely response from you. We moved ahead and have invested a considerable amount of resources in preparing for the evidentiary hearing. Accordingly, we are no longer interested in a paper proceeding.

Thanks.

Greg

Gregory O. Olaniran | Partner, through his professional corporation
T: 202.355.7917 | goo@msk.com
Mitchell Silberberg & Knupp LLP | www.msk.com
1818 N Street NW, 8th Floor, Washington, DC 20036

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THIS MESSAGE IS STRICTLY PROHIBITED. PLEASE NOTIFY US IMMEDIATELY BY REPLY E-MAIL OR TELEPHONE, AND DELETE THE ORIGINAL MESSAGE AND ALL ATTACHMENTS FROM YOUR SYSTEM. THANK YOU.

-----Original Message-----

From: Brian D. Boydston, Esq. [<mailto:brianb@ix.netcom.com>]

Sent: Wednesday, March 21, 2018 2:23 PM

To: Olaniran, Greg; Plovnick, Lucy; matthew.maclean@pillsburylaw.com; michael.warley@pillsburylaw.com

Subject: 2012-6 CRB CD 04-09 and 2012-7 CRB SD 99-09

Dear Counsel,

With regard to the above referenced hearings, IPG is agreeable to making it a paper proceeding.

Brian Boydston

The contents of this message, together with any attachments, are intended only for the use of the individual or entity to which they are addressed and may contain information that is legally privileged, confidential and exempt from disclosure. If you are not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this message, or any attachment, is strictly prohibited. If you have received this message in error, please notify the original sender or the Pillsbury Winthrop Shaw Pittman Help Desk at Tel: 800-477-0770, Option 1, immediately by telephone or by return E-mail and delete this message, along with any attachments, from your computer. Thank you.

Certificate of Service

I hereby certify that on Friday, April 06, 2018 I provided a true and correct copy of the MPAA and SDC Reply to IPG's Opposition to Joint Motion in Limine and Motion for Summary Disposition as a Paper Proceeding to the following:

Independent Producers Group (IPG), represented by Brian D Boydston served via Electronic Service at brianb@ix.netcom.com

Devotional Claimants, represented by Arnold P Lutzker served via Electronic Service at arnie@lutzker.com

Signed: /s/ Lucy H Plovnick